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The Pleasures and Perils of Inheritance

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It may seem, at first blush, unhelpfully morbid or bleak to speak about inheritance in the context of ageing. Certainly, to do so is to go against the grain of popular contemporary injunctions to refute ageing and to 'fight' mortality. But facing death, reflecting on one's legacies (material and ethical, personal and political) and the legal and inter-personal attempts to resolve or prevent inheritance conflicts, bring to the fore constructions of memory and identity, inter-generational relations and the complexities of doing and undoing family and kinship. Indeed inheritance is a site at which these practices are brought into an often unbearably sharp focus. These are all key themes in Lynne Segal's beautiful new book *Out of Time: The Pleasures and Perils of Ageing* and, consequently, drawing attention to inheritance, keeping sight of it, bringing it into play is a useful piece of the puzzle of ageing across a range of disciplines.

To write a will is to be 'responsible'. At least that is the dominant frequently repeated public injunction. This perspective, however, overlooks the creative space, simple pleasures and radical potential provided by testamentary freedom. Lafler (1997) brings to light a wonderful eighteenth century example of this through her analysis of the will of Katherine Maynwaring. She wrote her will in 1764 but in the subsequent 16 years before her death added 14 codicils. These texts provide a way of hearing 'the authentic voice of a woman who died more than two hundred years ago' (1997: 158) and the codicils in particular reveal her 'mediating upon and revising her

identity' (1997: 173). Revealingly, as she aged the emphasis in her bequests shifts away from her biological relatives and towards her carers, friends and domestic pets.

Another example is the will of the author E M Forster. The significance of his will has been overlooked by the posthumous publication of his novel *Maurice*. But in contrast to the novel, which was written in 1914 and celebrates a utopian conjugal couple, his will, written in 1965 - six years before his death - arguably paints a more reflective and complex picture which speaks of the sustainability of non-monogamous relationships, avuncularity, a ménage à trois, quasi-adoptions, progeny without reproduction and friendships across ages and class. Forster was a famous man and his will skilfully performs for both a public and private readership. But as the will of an elderly frail man, increasingly dependent on others and reflecting on his past and thinking about his legacies, it is a text that speaks to a host of contemporary narratives and concerns (Monk, 2013).

Both Mainwaring and Forster's wills can be understood and read as sites of resistance. For inheritance, broadly understood, has long been the crux and almost the *raison d'être*, of conventional, albeit subtly shifting, familial practices, and always intimately connected and entwined with capitalism and patriarchy (Fellows, 1991; Hacker, 2010; Beckert, 2008). Within this framework women, in particular, have served as passive vehicles for the transmission of names, wealth and continuity across generations. In Forster's *Howards End* (1910), Mrs Wilcox's bequest of her home to a friend is described as, 'treacherous to the family, to the laws of property . . . Treacherous and absurd'. Until the late 19th century married women were prevented in law from writing wills and as George Eliot's *Middlemarch* (1871) reminds us, through Casaubons' notorious codicil, testamentary conditions in the wills of husbands often perpetuated control after death; and to a certain extent they still

can (Monk, 2011). Eliot and Forster's use of inheritance plots was far from unusual in Victorian and Edwardian literature, indeed it was the norm. And as Counter (2010) and Frank (2010) have both demonstrated the question, 'who will inherit' in nineteenth century literature was always inherently political, and often revolutionary.

Curiously, in modern and contemporary literature inheritance plots and wills no longer appear (one notable exception is Muriel Spark's brilliant *Memento Mori*, 1959). Where however they do appear, is in costume dramas, TV soaps or as the source of gossip for tabloids. In the latter, tellingly, what makes a will noteworthy and salacious, is a testator departing from the conventional familial form, as the following headlines make clear: 'Muriel Spark leaves millions to woman friend rather than son' (*Evening Standard* 14 April 2007) and, 'Why did this decadent peer leave his millions to his manservant' (*Daily Mail* 20 June 2011). Will writing, as a public and political narrative, has been depoliticised. Which is, of course, not to say that that the personal is not political, but to observe that inheritance stories are no longer, as they undoubtedly were, the chosen vehicle for explicit, serious social and political commentary. Will writing has also become 'domesticated'. Hasson's contemporary research demonstrates that will writing practices are highly gendered; it is women who engage in will writing more than men and are more willing to confront ageing, to the extent that will writing is sometimes perceived as part of domestic labour, an aspect of care (Hasson, 2013).

For those whose lives have been lived outside of traditional familial norms, inheritance takes on an added significance. Partly because their lives are invisible in intestacy laws, which remain firmly rooted in blood and marital status. There is nothing new here, but a moment when this fact was experienced collectively very powerfully was in the gay community in the '80s and early

'90s; the time before effective HIV treatment. The Legal Service Group within the Terence Higgins Trust in the UK provided a will writing service and this, what could be described as legal activism, enabled people to acknowledge through bequests their 'logical' as opposed to their 'biological' family (as the writer Armistead Maupin describes peoples 'families of choice'). As one of the volunteer lawyers who wrote these wills I well remember how naming people, leaving them something, making clear who was significant or who had cared, through a bequest - sometimes simply a record collection or leather chaps or a diamante broach - mattered immensely and demonstrated the complex pleasures, attachments and memories that objects and possessions can hold and convey. Language, the words used in a will, can also be significant. And there is an ongoing debate about the ability to which a will can and should explicitly express feelings (Gordon, 2010; Hacker, 2010).

Amongst the, predominately gay men, who the Terence Higgins Trust lawyers wrote wills for at this time it was not unusual for biological relatives to be excluded. Recent research however suggests that younger gay men and lesbians are now far more likely to include relatives in their wills (Monk, 2014); a generational shift that echoes other findings that reveal the 'ordinariness' of being gay and lesbian in modern Britain (Heaphy et al, 2013). What is significant and persisting is the extent to which wills are used explicitly as a space for negotiating and expressing degrees of acceptance and belonging.

Alongside the symbolic and emotional dimensions, inheritance of course brings materiality and inequalities to the fore. This is a factor sometimes too easily overlooked in 'transgressive' celebratory accounts of alternative kinship and friendships narratives, but with ageing become ever more present and violent. Identifying inheritance as one cause of inequality is not new, but the extent to which this has become increasingly the case

has been explored by a number of scholars (Beckert, 2008; Graetz and Shapiro, 2005). Madoff (2010) in her analysis notes this trend but also identifies how in the USA a host of incremental ad hoc legal reforms in trust and copyright over the last 20 or so years have substantially increased the power of the dead over the living. In an age of increased longevity, law in this way has been attentive to and complicit with the fantasy of living forever; while at the same time being increasingly inattentive to the needs of so many of the living.

Law's violence is also evident in cases where the courts utilise doctrinal rules about capacity, clarity and undue influence to invalidate the testamentary intentions of the unconventional. A striking example of this, recounted by Fellows (1991: 143), is the case of *In re Strittmater's Estate* 40 N.J. Eq. 94, 53 A.2d 205 (1947). In this case, from the US state of New Jersey, a woman with no children wrote a will leaving everything she had to a women's rights organization, the National Women's Party, an organisation she had been actively involved with since 1925. Her will was challenged by her nieces and nephews, not on the grounds that they were more entitled to inherit but, rather, that their feminist aunt was at the time of writing her will 'mentally unstable'. The court upheld the challenge on the evidence provided by notes she had written in the margins of books which revealed 'insane delusions concerning men' and 'feminism to a neurotic extreme'. While such a result is unlikely now, certainly in the UK, the space for judicial discretion and moral judgment, masked as an attempt to identify the 'true' intentions and mental state of a testator, is still present and this results in decisions being both difficult to predict and often hard to reconcile (Monk, 2011; Douglas, 2014). This is particularly significant for the increasing number of vulnerable and dependent elderly people, for mental fragility (a category far wider than clinical dementia) legitimises challenges to wills in the name of protecting

the testator. Moreover, new laws under the Mental Capacity Act 2005, enable a court to execute a 'statutory will' for a person who lacks capacity. Such a will must be made in accordance with a judge's assessment of the 'best interests' of the vulnerable person. This is new legal territory as the Act only came into force in 2007, but Lord Justice Munby has held that, 'we have an interest in being remembered as having done the "right thing"' (Re M [2009] EWHC 2525 (Fam) at [38]). How courts will define the 'right thing' will reveal much about contemporary norms about parenting and family life.

Inheritance disputes are increasing. As legal aid in the UK is removed from family law in other areas, inheritance is the largest growth area where familial conflicts are resolved by law. These cases provide a rich source of contemporary texts and tales about ageing and its intersection with care and shifting familial forms. In particular the conflicted and contested meanings of family as, on one hand, a question of status and, on the other, an activity are key here. And without being overly reductive it is, perhaps, no coincidence that these cases have increased at the same time as the first generation to take advantage of living outside of traditional norms ages and dies.

Stripped bare, in the stories told to the courts we see four recurring narratives. First, siblings who have undertaken care for parents pitted against siblings who make claims based on equality (the former most often daughters). Second, paid carers of elderly people, who may have lived with the deceased for many years, pitted against the children who have had either little, or far less, contact and involvement with the care of their parents. Third, where elderly people don't have children, conflicts between the ethical interests and non-familial kinships and the extended biological family. Fourth, conflicts between children of the deceased's first spouse against step parents and half siblings. Judicial attempts to get to the truth about the deceased's intentions and

the mental capacity of vulnerable, inevitably dependent, elderly people require detailed explorations of a persons shifting attachments, often over many decades. And it is important to emphasise that unlike financial disputes on divorce (increasingly the preserve of the very rich) these conflicts often involve very modest estates.

The resolution of these conflicts reveal often thinly masked judicial norms - which certainly make it harder for, or at least place an additional burden on, individuals whose wishes challenge traditional assumptions about inheritance based on vertical genealogical descent. But in the accounts of all the parties involved the rich meanings of inheritance are revealed, for it is through material claims that people perform complex psycho-social negotiations and communicate emotional expectations, rejections, dependencies and, indeed, the perils and pleasures of love.

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